

Finally, Mr. Laman provided an Affidavit from a MATI official confirming that MATI concurs with the Joint Petition and Mr. Laman's testimony. He included a copy of the Affidavit of Godfrey Enjady providing that representation on behalf of MATI as Exhibit DL-4 to his supplemental testimony.

Staff supports the proposed realignment. Staff witness Eugene Evans states that the transfer is in the public interest. The service area will be subject to the control of MATI, a tribally owned cooperative. The change in study area boundaries will not adversely affect the federal universal service fund, because there are no customers and no facilities affected. The transfer will also not affect the pending ETC certification case of PVT's subsidiary, Fuego Wireless, LLC ("Fuego") at Case No. 13-00040-UT.¹ Fuego's Application does not request ETC designation for tribal lands, such that the tribal lands at issue here will not be affected by either this case or the ETC certification case.

Mr. Evans states that a formal hearing will not be needed. He said sufficient facts have been placed on the record in this case to support the Petition, and no party opposes the transfer of land.

III. HEARING EXAMINER RECOMMENDATIONS

The Hearing Examiner agrees with the parties that no hearing is needed. No facts are in dispute. The Hearing Examiner recommends that the Commission approve PVT's and MATI's Joint Petition. There are no current customers in the area proposed for transfer. There are no PVT facilities in the area proposed for transfer. The area is within the Mescalero Apache Reservation, and the current service provider within the reservation, MATI, wants to provide service in the area if and when any customers appear in the area.

¹ Fuego's request for ETC certification is on hold at Fuego's request pending the establishment of standards by the Federal Communications Commission for the Phase II Mobility Fund Auction. Evans Direct, p. 8.

The realignment will not negatively implicate the universal service fund or the request of PVT's subsidiary for ETC designation. The proposed realignment is therefore in the public interest and should be approved.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** as follows:

1. The foregoing statement of the case, discussion, and all findings and conclusions contained therein, whether or not separately stated, numbered or designated as findings and conclusions, are hereby incorporated by reference as findings of fact and conclusions of law of the Commission.
2. The Commission has jurisdiction over the subject matter of the proceeding and the parties.
3. Reasonable, proper and adequate notice of this case has been given.
4. The Commission has regulatory authority over the proposed territory realignments and does not object to the realignments.
5. The boundary realignment proposed by PVT and MATI (i.e., the relinquishment of the Tuton Area by PVT and its addition to MATI) is in the public interest and should be approved.

V. DECRETAL PARAGRAPHS

The Hearing Examiner recommends that the Commission **ORDER** as follows:

- A. The findings, conclusions and the decretal paragraphs herein are adopted, approved and ordered by the Commission.

B. The Joint Petition of PVT and MATI seeking Commission approval for the realignment of the service territory boundaries of PVT and MATI so that the Tuton Area is relinquished by PVT and is added by MATI is APPROVED.

C. PVT and MATI shall, within 30 days after the issuance of this Final Order, file with the Commission revised Service Territory Maps reflecting the proposed territory realignments.

D. Any matter not specifically ruled on during the hearing or in this Order is disposed of consistent with this Order.

E. This Order is effective immediately.

F. Copies of this Order shall be sent to all persons on the attached Certificate of Service.

G. This Docket is closed.

ISSUED at Santa Fe, New Mexico on November 21, 2013.

NEW MEXICO PUBLIC REGULATION COMMISSION



Ashley C. Schannauer
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT PETITION OF)
PENASCO VALLEY TELEPHONE COOPERATIVE,)
INC. AND MESCALEROAPACHE TELECOM, INC.)
FOR AUTHORITY TO REALIGN SERVICE)
TERRITORY BOUNDARIES)

Case No. 13-00080-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Recommended Decision* issued this 21st day of November, 2013 was sent by electronic mail or by regular mail to the parties listed below.

William Templeman
Alan Morel
Joan Ellis
Michael Ripperger
Eugene Evans
Lisa Adelman

wtempleman@cmtisantafe.com;
apmpa@apmpa.com;
Joan.Ellis@state.nm.us;
Michael.Ripperger@state.nm.us;
Eugene.evans@state.nm.us;
Lisa.adelman@state.nm.us;

Penasco Valley Telephone Cooperative, Inc.
4011 W. Main
Artesia, NM 88210

Alan P. Morel, P.A.
P.O. Box 1030
Ruidoso, NM 88355-1030

Hand-delivered to:

Joan T. Ellis, Esq.
Staff Counsel
NMPRC – Legal Division
P.O. Box 1269/1120 Paseo de Peralta
Santa Fe, NM 87504

Hand-delivered to:

Lisa G. Adelman, Esq.
Associate General Counsel
NMPRC-Office of General Counsel
PO Box 1269/1120 Paseo de Peralta
Santa Fe, NM 87504

Hand-delivered to:

Eugene Evans
NMPRC-Utility Division
PO Box 1269/1120 Paseo de Peralta
Santa Fe, NM 87504

Hand-delivered to:

Michael Ripperger
NMPRC-Utility Division
PO Box 1269/1120 Paseo de Peralta
Santa Fe, NM 87504

DATED this 21st day of November, 2013.

NEW MEXICO PUBLIC REGULATION COMMISSION


Ashley C. Schannauer, Hearing Examiner